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PERIPHERALISATION OF MIGRANT WORKFORCE IN POLAND: INBETWEEN POLICY PATHS AND REGULATORY APPROACHES*

Abstract

Migration of people is a multidimensional phenomenon that combines various aspects. Complexity of migration processes, its variability in time, diversity of economic, demographic, political or cultural determinants pose considerable challenges on the European labour market on many levels, starting from theoretical ones—related to the adoption of a uniform definition of migrant workers, and ending with the practical ones—relating to the establishment of the sustainable migration policy measures that would aim at safeguarding their fully-fledged participation in it guaranteed by various regulatory norms and standards.

The article aims at presenting a rudimentary analysis of the specificity of labour migration in Poland against the background of European countries, in order to elucidate the deficiencies of the present regulatory approaches in addressing the phenomenon of *sui generis* peripheralization of migrant workforce in Poland. Its content has been enriched with comparative overview of the results of the case studies conducted in one of the key sectors for European labour market exposed to this phenomenon—namely pork meat value chain. Notably, problems related to wage levels and working conditions of migrant workers observed in this sector are as much industry-specific, as exemplary of wider global trends in industries that offer low pay, low status, little career advancement and stressful work environment.

Słowa kluczowe: migranci, rynek pracy w Polsce, zatrudnienie w łańcuchu produkcji mięsa wieprzowego, studium przypadku

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Keywords: migrants, Polish labour market, employment in the pork meat value chain, case study

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Introduction

The European Union is more and more frequently confronted with the problem of intensification of the overall migration movements, which nowadays seems to be triggered mainly by the demographic ageing of European societies, recent economic crisis, as well as the growing number of newcomers to the EU.

On 1 January 2018, 22.3 million people of the 512.4 million people living in the EU were non-EU citizens (Eurostat 2019a). In 2017, a total of 4.4 million people immigrated to one of the EU-28 Member States, among which, 2.0 million were citizens of non-EU countries, 1.3 million people with citizenship of a different EU Member State than the one to which they immigrated, around 1.0 million people who migrated to an EU Member State of which they had the citizenship, and some 11 thousand stateless people (Eurostat 2019b). At the same time, as EPSON study reveals: “current labour migration trends in Europe show large differences across regions and countries in Europe . . . [Yet], even within countries receiving large numbers of migrants, new geographies of ‘inner peripheralisation’ are emerging as the European territory becomes increasingly fractured and polarised” (ESPON, Policy Brief).

The complexity of the increasingly acute migration phenomenon is well reflected in the rather fragmented multilevel legal framework in Europe, which represents a patchwork of national laws, EU law, the Council of Europe regulations¹ and other international agreements entered into by the European States (Art. 11 of Convention No. 97 of 1949; Art. 11 of Convention No. 143 of 1975), still lacking a uniform definition of “migrants” as well as “migrant workers.” Solely at the EU level, different definitions of migration, including immigration and emigration, coexist. Notably, these used in the EU official documents do not necessarily coincide with those used at the Member State level, which makes it difficult to collect comparable data (OJ L 2007/199, pp. 23–29; Art. 2 (i)), and most importantly effectively implement the free movement of persons within the territory of EU Member States, and freedom of movement for workers, laid down in the EU primary law (Art. 3(2) of TEU; Art. 4(2)(a), 20, 26, 45–48 of TFEU), that constitute founding principles of the EU (Art. 9 of TEU; Art. 20, 21 of TFEU; titles IV and V of TFEU; Art. 45 of the Charter of Fundamental Rights of the European Union; OJ L 2004/158, pp. 77–123).

¹ The term “migrant worker” is used in one of the basic documents of the Council of Europe—the European Social Charter, in Art. 19. The further clarification of the term is provided in 1977 European Convention on the Legal Status of Migrant Workers’ Rights, which defines a “migrant worker” as “a national of a Contracting Party who has been authorised by another Contracting Party to reside in its territory in order to take up paid employment.”

Yet, it is the opinion shared by the authors, that the potential of migrants' workforce in Europe does not require construing a comprehensive legal architecture, but rather normatively consistent policy framework that would take into proper account the correlation of two values: the need to provide them with decent/non-discriminatory working conditions and to protect the interests of the host country in accordance with the principle of complementarity (Florczak 2019b, pp. 223–232). According to the latter employment of foreign workers should take place only when there is no domestic work force.² Such a formulation of the relevant principle does not entail *per se* discriminatory employment of foreigners. Nevertheless, in practice it largely determines their situation on the labour market. If foreigners are to be offered jobs often rejected by domestic workers, it is highly probable that this is not a “good” job.³

The applicable law, both at the EU (*vide* art 15.3 EU Charter of Fundamental Rights) and national level, does not allow for discriminatory treatment of foreigners in relation to domestic workers. Therefore, the phenomenon of the marginalization of migrant workforce does not result directly from the provisions of law but rather from their ineffective or inconsistent application/enforcement. Directing migrant workers to the sectors of the economy that are marginal from the point of view of the interest of domestic workers limits their right to choose employment, which ultimately results in depriving them of access to/freedom to choose decent work. The principle of complementarity, differentiates already at the initial stage of seeking employment, the situation of migrants from that of domestic workers. Interdisciplinary research in the pork meat value chain in the EU carried out within the Meat-up ffire project (*nota bene* constituting the direct stimulus for the preparation of this article) clearly confirms that in the event of a collision with migrant workforce rights, the principle of complementarity would most probably still prevail.

Foreigners in Poland: Scale of employment

Within the Polish legal system there is neither the term “migrant” nor synonyms used in relation to persons who come to and stay on the territory of Poland from another

² The main consequence of the principle of complementarity is the obligation to make so called “test of the labour market.” By this action an employer *in spe* has to prove that there are no unemployed Poles who are ready to undertake work which he is going to entrust to the foreigner. This test is being done by the Poviát Labour Office at the employer's request.

³ According to European Commission recognizing the skills of migrants and enabling them to work in jobs that match their skills (not the need of the labour market) and experience is an important element in creating a migrant-friendly environment, which is seen as one of the key aspects of maintaining the labour market in good condition. Such a stipulation was made in: Commission staff working document: Country Report Poland 2019. Accompanying the document communication from the Commission to The European Parliament, The European Council, The Council, The European Central Bank And The Eurogroup 2019 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011 {COM(2019)150final}.

country. Instead similar or derivative terms are used in various institutional frameworks. For instance, Art. 3 of the current Act on Foreigners of 12 December 2013 states that a foreigner shall be anyone who does not have Polish citizenship. Art. 2 of the Act of 14 July 2006 on the entry into, residence in and exit from the territory of the Republic of Poland of nationals of the Member States of the European Union and their family members (Dz.U. 2019, item 293, further as: Act of 14 July 2006), relies on the term EU citizen—which denotes a foreigner, who is (a) a citizen of a Member State of the European Union, (b) a national of a Member State of the European Free Trade Association (EFTA)—Parties to the Agreement on the European Economic Area, (c) a citizen of the Swiss Confederation.

The Polish legal order divides foreigners into two categories: those whose stay, and in majority of cases also work, requires obtaining a relevant permit (or its substitute) and those whose stay requires only notification. The second category (called “EU citizens”) includes EU, EFTA and Switzerland citizens. An EU citizen who entered territory of the Republic of Poland in order to seek employment may stay without having to meet the conditions of residence for a period of not more than six months, unless—after the expiry of this period—demonstrates that he/she continues to actively seek employment and has genuine chances of employment (Art. 15/1/2 of the Act of 14 July 2006).

If the residence in the territory of the Republic of Poland lasts longer than three months, an EU citizen is required to register their stay (Art. 15/1/1 of the Act of 14 July 2006). Residence registration obligation does not apply to an EU citizen who has the right of residence in order to seek employment, as discussed above. As the employment rate of EU citizens is not recorded, there is no relevant data to determine its scale. However, numerous data are available on the employment of third country nationals.

In the last decade, an upward trend in the inflow of foreigners from third countries to the Polish labour market is noticeable. In 2008, 25 500 applications for work permits were submitted. In 2017, 267 136 were filed, in 2018—366 898, and in the first half of 2019—232 951 (annual reports for years 2008, 2017–2019). Growth is also noticeable in the use of so-called simplified procedure, including statements about the intention to entrust work to a foreigner, which were registered until the end of 2017, and statements about entrusting work to a foreigner, registered in accordance with the rules in force from the beginning of 2018.

In 2007, the simplified procedure was to be used for 21 797 people, while in 2017 already for 1 824 464 people (annual reports for 2007 and 2017). This procedure currently applies to citizens of the Republic of Armenia, the Republic of Belarus, the Republic of Georgia, the Republic of Moldova, the Russian Federation and Ukraine and consists in registering declarations of entrustment of work with employment offices. Such a declaration is registered in the Poviats Labour Office by the entity which is to entrust the work (Art. 88z/2 of Act of 20 April 2004 on Employment Promotion and Labour Market Institutions, Dz.U. 2019, item 1482 consolidated text, as amended; Regulation of 7 December 2017 of the Minister of Family, Labour and Social Policy on issuing a work permit for a foreigner and entry of a declaration on entrusting work to a foreigner in

the record of statements, Dz.U. 2017, item 2345; Regulation of 8 December 2017 of the Minister of Family, Labour and Social Policy regarding countries to which certain provisions on seasonal work permits and provisions on the declaration of entrusting work to a foreigner apply, Dz.U. 2017, item 2349).

The possibility of employing foreigners on the basis of seasonal work permits has been in force since 2018. In 2018, Poviats Labour Offices issued 121,436 such permits (Departament Rynku Pracy MRPiPS 2018c). The introduction of this type of permit may have caused a slight decrease in the registered declarations of entrustment of employment in comparison to 2017. In 2017 1 582 225 of such declarations were submitted (1 446 303 concerned Ukrainian citizens, see: Departament Rynku Pracy MRPiPS 2018a). In 2018—1 119 926 of seasonal work permits concerning Ukrainian citizens were issued. For several years, Ukrainian citizens have dominated among the nationalities represented by migrants from third countries arriving in Poland. As mentioned above, in 2017—1 824 464 declarations of intent to entrust work were recorded, and 1 714 891 of them concerned Ukrainian citizens. Of 366 898 work permits issued in 2018, 262 461 concerned Ukrainian citizens.

The above statistics clearly indicate an upward tendency in the participation of migrants on the Polish labour market, especially when their number is compared with the overall economic activity of Poles. In the first quarter of 2019, the economically active population aged 15 years and more comprised 16 940 thous. persons (GUS 2019). Migrants constitute a significant group among them. Such huge labour capital must be properly managed by labour market actors. The Polish labour market fully utilizes the labour capital of migrants. Yet areas of employment open to migrants are mainly those that, due to their uncompetitive working conditions, have been rejected by domestic workers.

Areas of employment for migrants in Poland. Choice or necessity?

Undoubtedly, migrant workers, due to their weak negotiation position and poor knowledge of their rights, mainly caused by the linguistic barrier, are a group which is particularly exposed to being abused on the labour market, and as a result end up at its peripheries (Tomšej 2019, p. 170). It is even claimed that migrants—like ethnic minority workers—are the last to be hired and the first to be fired (Taran 2012, p. 1). Of course both at the level of the European labour law and national one discrimination based on the nationality is prohibited. European labour law sets grounds for prohibition of migrants workers discrimination not only on the level of pure employment law (OJ L 2000/180; OJ L 2000/303), but also on the ground of social security law (OJ L 2004/166, p. 1; Verschueren, Bednarowicz 2019, p. 122).

Under Polish labour law a rule of non-discrimination on the grounds of nationality derives directly from Art. 11³ of the Polish Labour Code, according to which any discrimination in employment, direct or indirect, with respect to, among others—nationality,

is prohibited. In addition, Art. 18^{3a} of Labour Code stipulates that employees should be treated equally in relation to, i.a. establishing an employment relationship, regardless of their nationality.

Yet, while discrimination based on nationality is a legally relevant and forbidden phenomenon, precarious employment of migrants is legally neutral, being subject to a negative assessment from an extra-legal perspective. One of the symptoms of the phenomenon of precarisation of migrants employment is entrusting them only simple jobs, to which no high qualifications are not required (Florczak 2019a, pp. 9–13).

Taking as a point of departure the abovementioned, apart from the scale of the phenomenon discussed and the directions of the influx of migrants, it is important to describe the work performed by foreigners. Simple work dominates among the work performed by foreigners. According to data collected by the Ministry of Family, Labour and Social Policy (Departament Rynku Pracy MRPiPS 2018b) the most popular occupations among foreigners are the truck driver and an auxiliary field worker. Many foreigners perform work categorised as “simple jobs not elsewhere classified.” Temporary employment agencies have a large share in employing foreigners, entrusting them mainly with jobs classified as simple work in industry, warehouse work, manual packer work, warehouse worker work, demolition and punching work, auxiliary work of workers in the processing industry, work of auxiliary construction workers or work of welders. There is no doubt, therefore, that foreigners mainly carry out simple work, which domestic workers consciously reject.

On the Polish labour market, dualism among the structure of deficit employment is noteworthy. Based on data from the first half of 2018, such occupations can be classified into two main groups (Ministerstwo Rodziny, Pracy i Polityki Społecznej 2018). The first of them includes the professions of employees performing simple work. This group includes workers performing odd simple jobs, personal service workers not elsewhere classified, employees preparing fast food meals, other cleaning workers, industrial workers and craftsmen not elsewhere classified. The second group is the work performed by highly qualified specialists. These include application developers, specialists in database and computer networks not elsewhere classified, specialists in IT systems development, computer system administrators, managers in financial and insurance institutions. The deficit identified within the first mentioned group can certainly be supplemented by economic migrants workers, mainly from third countries. This phenomenon is already occurring on a large scale, taking into account the scale of employment of migrants presented for professionally active people. Statistical data from 2017 indicate that on the Polish labour market there are slightly more than 17 million citizens over 15 years of age (GUS 2018, p. 237). The employment of over two million foreigners from third countries appears to be significant in the perspective of the entire labour market. Yet, vast majority of them undertake the only job which is being offered—simple one.

Peripheralisation of core labour workforce in Europe. The case of migrant workers in pork meat value chain

The labour shortage in the meat industry continues to work its way around the globe, with numerous markets attempting to attract foreign staff and prevent a downturn caused by shrinking domestic workforce (Fortune 2019). The same dynamics is observable in the EU, within which the livestock sector constitutes 45% of the total agricultural activity, and contributes €168 billion annually to the EU economy, while creating employment for almost 30 million people (Animal Task Force 2017). Notably, pork meat sector represents the core of meat production in the EU-28, and 9.0 % of the total EU agricultural output (Eurostat 2015, p. 9). Yet, the domestic workforce of one of the leading mass production industries in Europe is in visible decline, making the problems related to wage levels and working conditions of migrant workers used in this sector as much industry-specific, as exemplary of wider global trends in industries and services that offer low pay, low status, little career advancement and stressful work environment (Grey 1999, p. 16).

For instance, in Denmark, the pork value chain experienced a relevant drop in the number of employees (from 17,000 in 2008 to 13,000 in 2016)—*nota bene* visible in all the production phases. Foreigners account for 38% (2016) of the workforce in breeding piglets; 27% in breeding and slaughtering pigs (mostly from Romania and Ukraine); 29% in processing and slaughterhouses (mostly from Poland, Myanmar, Sri Lanka, Vietnam; see: Meat-up ffire project, Denmark).

In Italy, the workforce in the meat chain—that includes cattle and pigs—are 50,576 (2017), with a slight increase (3,3%) since 2013. Foreign workers account for 29% of the workforce, approximately divided in some 50% in slaughtering and 25% in processing (Meat-up ffire project, Italy).

Germany employs 114,000 people in slaughtering and meat processing, yet the free movement of people and services within the EU has had a major impact on the German meat industry's labour market and labour process. In particular, the Posted Workers Directive appears to have contributed to an overall decline in the number of permanent staff as well reconfiguration of firms' qualification structure (Meat-up ffire project, Germany).

In Belgium, the average size of companies, as part of the industrial concentration process, has been increasing to 27,5 employees (2014). There has also been also an increase from 33,7% (2000) to 46,3% (2014) of companies with more than 100 employees. Yet, the shortage of labour in the sector apparently bears no effects on minimum wages (Meat-up ffire project, Belgium).

In Poland, the largest pork producer in Poland –ANIMEX, relies heavily on the external labour force—temporary workers, most of whom are migrants from Ukraine. Notably, the relevant case is in line with the general trends on the Polish labour market. Still, the improvement of the level of unionisation of workers, as the case of ANIMEX-Szczecin confirms, may be crucial for improvement of working conditions of migrant workers (Meat-up ffire project, Poland).

While significant efforts have been made by some of the European trade unions over the years to advance labour rights, working conditions and health and safety at work in the European meat industry, in some regions certain inappropriate practices such as differences of treatment of workers, non-transparent, coercive and threatening behaviour by some companies, ineffective complaints procedures still persist (Meat-up fire project, WP2). Indubitably, fragmentation of the pork meat sector, complex contractual relationships, and a vacuum in representation for employees create even more challenging environment for the establishment of good working conditions for migrant workers. At the same time, social dumping of migrants workers is a phenomenon which weakens considerably the domestic workers negotiating position. From that perspective labour unions should take into proper consideration the migrants workers rights, even if they are not their members.

Conclusions

In mid-2019, the European Union Agency for Fundamental Rights warned that: “European governments urgently need to do more to combat serious forms of labour exploitation in companies, factories and farms across the EU” (FRA 2018). Still, much work needs to be done at all levels to reduce the causes of vulnerability and promote fair living wages, equality of treatment for migrant workers. In the authors’ opinion, a condition *sine qua non* of moving the migrant workers from the periphery toward the core of European labour market requires enabling migrant workers to take advantage of trade union activities and fostering more dialogue through European and international trade union cooperation with the aim to enforce the legal standards and norms encapsulated in the fragmented yet sufficiently robust legal framework.

In the light of the opinion of the European Committee of the Regions, integration of third country nationals should be viewed as a dynamic process that enables third country nationals to become fully part of the host society and to work towards self-reliance and participation in the host society. Thus, “integration as a policy area cannot stand in isolation and, by definition, runs through the various traditional policy areas such as education, employment, welfare, public health, housing, etc.” Full labour market integration cannot take place as long as employment of migrants workers from third countries will not be satisfying from the point of view of employment conditions (Kiersztyn 2014, pp. 13–19). Improvement of working conditions of migrant workforce should be of utmost importance to hosting country, as they have significant influence on its economic situation (Kowalski, Matera, Sokołowicz 2019).

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Regulation of 8 December 2017 of the Minister of Family, Labour and Social Policy regarding countries to which certain provisions on seasonal work permits and provisions on the declaration of entrusting work to a foreigner apply, Dz.U. 2017, item 2349.